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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,237	07/09/2001	Paul D. Daly	60426-282; 2000P07905US01	7497
24500 7590 09/21/2007 SIEMENS CORPORATION INTELLECTUAL PROPERTY LAW DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN, NJ 08830			EXAMINER LAO, LUN S	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 09/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/901,237

Applicant(s)

DALY, PAUL D.

Examiner

Lun-See Lao

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Introduction*

1. This action is response to the applicant's response filed on 06-27-2007. Claims 1-6 and 20-22 are pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al (U.S. Patent No. 5748748) in view of Uesugi et al (JP 404179814 A).

Regarding Claims 1, Fischer discloses an air induction system comprising (Figs.

1, 3, and 5):

an air induction body (Figs. 1, 3, and 5);

a speaker (Figs. 1, 3, and 5; column 5, lines 35-44);

a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes (small car, sports car) of noise attenuation signal generation (column 3, lines 43-63);

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an engine sensor (Fig. 1; column 7, line 58 to column 8, line 5) for communicating engine data to said control unit (Fig. 1);

said control unit for selecting one of said at least two modes (small car, sports car) of noise attenuation signal generation based on said engine data (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle) (column 3, line 43 to column 4, line 28; col. 9, lines 29-42); and

wherein said at least two modes of noise attenuation signal generation comprises a first driving mode and a second driving mode (small car driving, sports car driving), said first driving mode providing a lower level of noise attenuation than said second driving mode (column 3, line 43 to column 4, line 59; column 9, lines 29-42; column 13, line 25 to column 14, line 8).

Fischer does not expressly disclose said control unit selects said first driving mode in response to a high engine speed and a high engine load communicated to said control unit by said engine sensor and said control unit selects said second driving mode in response to a low engine speed and a low engine load communicated to said control unit by said engine sensor.

However, it is well known in the art that a car that is in low speed and low load would desire a higher noise attenuation than a car that is in high speed and high load because at low speed and load the driver of the car would not desire to sound like a sport car, which would be disturbing to the driver and other people on the road or the neighborhood that the driver is driving around. However, in high speed and load, the

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driver would desire to have less noise attenuation to be carried out, which would provide the impression of driving a sport car. One example is provided by Uesugi who teaches selecting one of the two modes of noise attenuation, one mode for the feel of sports-car driving and the other mode for normal driving. See page 2.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Fischer to have the control unit of Fischer, select said first driving mode in response to a high engine speed and a high engine load in order to provide the user of the car with less noise attenuation to be carried out, which would provide the feel of driving a sport car and have the control unit of Fischer, select said second driving mode in response to a low engine speed and a low engine load in order for the user of the car with higher noise attenuation, which would be less disturbing to the driver/neighbor for normal driving.

Regarding Claim 2, Fischer as modified discloses engine data comprises engine load data and engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

Regarding Claim 3, Fischer as modified discloses a memory unit storing driving mode information that at least assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5).

Regarding Claim 4, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Figs. 1, 3, and 5).

Regarding Claim 5, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Figs. 1, 3, and 5).

Regarding Claim 6, Fischer as modified discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Figs. 1, 3, and 5).

Regarding Claim 20, Fisher discloses said first driving mode is a sport- driving mode and said second driving mode is a normal driving mode (column 3, lines 43-63).

All elements of Claims 21 and 22 are comprehended by Claim 1. Claims 21 and 22 are rejected for the reasons stated above apropos to Claim 1.

### ***Response to Arguments***

4. Applicant's arguments filed 06-27-2007 have been fully considered but they are not persuasive.

At the request of applicant (Remarks, page 3), Uesugi et al was provided in place of the Official Notice to show the teaching lacking in Fischer. Note the rejection of claim 1 for a detailed discussion.

Regarding applicant's argument that Fischer discloses only one mode of noise attenuation, ie, the sports car mode (Remarks, paragraph bridging pages 2 and 3), the examiner's position is that Fischer teaches two modes of noise attenuation, one for small car, and the other for sports car. See col. 3, lines 51-54 and col. 9, lines 36-42.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Remarks, page 3, first paragraph), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the examiner's conclusion of obviousness is based upon Fischer and Uesugi interpreted with the knowledge of one of ordinary skill in the art at the time the claimed invention was made.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tamamura et al. (US PAT. 5,485,523) is cited to show other related driving mode for active noise cancellation.

7. Any response to this action should be mailed to:

Mail Stop \_\_\_\_ (explanation, e.g., Amendment or After-final, etc.)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Facsimile responses should be faxed to:  
**(571) 273-8300**

Hand-delivered responses should be brought to:  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lao, Lun-See whose telephone number is (571) 272-7501. The examiner can normally be reached on Monday-Friday from 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin, can be reached on (571) 272-7848.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 whose telephone number is (571) 272-2600.

Lao, Lun-See *L.S.*  
Patent Examiner  
US Patent and Trademark Office  
Knox  
571-272-7501

Date 09-15-2007

  
VIVIAN CHIN  
SUPERVISOR, PATENT EXAMINER  
TECHNOLOGY CENTER 2600



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